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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

DOCKETED

AUG 10 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
THE ARIZONA DEPARTMENT OF
TRANSPORTATION TO UPGRADE AN
EXISTING CROSSING OF THE BURLINGTON
NORTHERN AND SANTA FE RAILWAY AT 36th
AVENUE, IN THE CITY OF PHOENIX,
MARICOPA COUNTY, ARIZONA, AT AAR/DOT
NO. 025-496-G.

DOCKET NO. RR-02635B-04-0375

DECISION NO. 67171OPINION AND ORDER

DATE OF HEARING: June 24, 2004
PLACE OF HEARING: Phoenix, Arizona
PRESIDING OFFICER: Marc E. Stern
APPEARANCES: Mr. Timothy Sabo, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On May 20, 2004, the Arizona Department of Transportation ("ADOT") submitted to the Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the approval of an agreement between ADOT and the Burlington Northern and Santa Fe Railway Company ("Railroad") to upgrade the Railroad's crossing at 36th Avenue, AAR/DOT No. 025-496-G, in the City of Phoenix, Arizona ("Application").

On June 3, 2004, by Procedural Order, the Application was set for a hearing and ADOT was ordered to notify any interested party of the Application and the hearing.

On June 17, 2004, ADOT certified that it provided notice pursuant to the terms of the Procedural Order.

On June 24, 2004, a full public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the matter was taken under advisement pending submission of a recommended Opinion and Order to the

1 Commission.

2 * * * * *

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 **FINDINGS OF FACT**

6 1. On May 20, 2004, ADOT filed an Application in which it requested an Opinion and
7 Order from the Commission with respect to an agreement between ADOT and the Railroad for the
8 upgrade of a crossing to replace existing crossbucks and to install automatic flashing light signals at
9 36th Avenue, AAR/DOT No. 025-496-G, in the City of Phoenix, Arizona.

10 2. On June 17, 2004, ADOT filed certification that it provided notice by registered U.S.
11 mail of the Application and hearing thereon.

12 3. A hearing was held as scheduled on June 24, 2004.

13 4. The Application provides for the Railroad to replace old crossbucks with automatic
14 gates and automatic flashing light signals.

15 5. Staff testified that the cost apportionment for the installation of the crossing upgrade
16 as provided in the Application was proper.

17 6. Staff has recommended that the Application be approved.

18 **CONCLUSIONS OF LAW**

19 1. The Commission has jurisdiction over the parties and over the subject matter of the
20 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
21 40-337.01.

22 2. Notice of the Application was provided in accordance with the law.

23 3. Installation of the crossing upgrade is necessary for the public's convenience and
24 safety.

25 4. The Application should be approved as recommended by Staff.

26 5. After installation of the crossing, the Railroad should maintain the crossing in
27 accordance with A.A.C. R14-5-104.

28 ...

ORDER

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

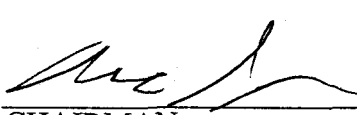

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

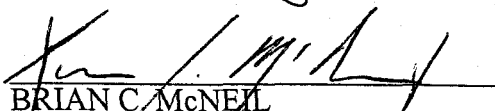
IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington Northern and Santa Fe Railway Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 10th day of August, 2004.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

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SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

DOCKET NO.

RR-02635B-04-0375

John Syers
ADOT-Utility & Railroad
205 S. 17th Avenue
Phoenix, Arizona 85007-3213

David Gibson
ADOT
Traffic Records Section
206 S. 17th Avenue, MD-064R
Phoenix, AZ 85007

Colleen Deines
Manager – Public Projects
BNSF Railway
740 E. Carnegie Drive
San Bernardino, CA 92408

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007